

E78LRAJ1

Trial

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

13 CR 211 (NRB)

5 RAJARENGAN RAJARATNAM,

6 Defendant.

7 -----x

8 New York, N.Y.

9 July 8, 2014

9:19 a.m.

10 Before:

11 HON. NAOMI REICE BUCHWALD,

12 District Judge

13
14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the

17 Southern District of New York

CHRISTOPHER D. FREY

18 RANDALL W. JACKSON

Assistant United States Attorneys

19 LANKLER SIFFERT & WOHL LLP

Attorneys for Defendant

20 BY: DAN M. GITNER

MICHAEL D. LONGYEAR

DEREK CHAN

21 ALSO PRESENT: Special Agent Samuel Moon

22 Ruby Hernandez, Paralegal

23 Tea Saiti, Paralegal

E78LRAJ1

Trial

1 (Trial resumed)

2 (Jury not present)

3 THE COURT: Good morning. Some of you didn't sleep
4 last night. Okay. I have the letters.

5 So let me say that prior to receiving the government's
6 letter with respect to the Palecek communications issue that I
7 was not planning on giving an instruction on that.

8 MR. JACKSON: Thank you, your Honor.

9 THE COURT: On the trading issue, Mr. Gitner, if you
10 want to respond, that's fine.

11 Everyone can sit as far as I'm concerned. Don't have
12 as much of an audience for my charge as you guys did.

13 MR. JACKSON: Your Honor, before Mr. Gitner responds,
14 can I just put one more fact into the discussion so he can
15 appropriately respond to it. I didn't have access to the
16 underlying trading records at the time, but I just want to
17 point out I had an opportunity to look at them this morning.
18 The buy that is referenced in the chart is at approximately
19 \$14. The sale is approximately 15. We're talking about a
20 profit being made on this hundred thousand shares. I think it
21 just further underscores some of the points we're talking
22 about. But I just wanted to add that additional fact, two
23 different prices.

24 MR. GITNER: I don't think underscores anything other
25 than that they sold and bought at different times. The stock

E78LRAJ1

Trial

1 prices go up and down over time.

2 Our point -- my point on summation was very simple.
3 His position remains unchanged. And the government, there was
4 a Government Exhibit talked about all of Raj's different codes,
5 TMT, TAM -- I can't remember all of them. Here it is,
6 Government Exhibit 13. Our point was very simple, that on
7 March 26, Raj's position, his position remained unchanged.
8 Whether he went up and down by buying and selling quickly doing
9 a day trade is immaterial to the argument. It's immaterial to
10 the point, frankly, that even the government was trying to
11 make. The point is that his position remained unchanged.

12 And when Mr. Frey got up and said that what I said was
13 false, he took the extraordinary step of saying what Mr. Gitner
14 said was false, that was misleading because in fact, in fact,
15 it was not. In fact, the position remained unchanged.

16 All I want to do in the curative instruction is remind
17 the jury what the trading records actually say. I tried to
18 make it balanced. I'm looking for my letter. I tried to use a
19 balanced instruction. If the Court doesn't want to say, to
20 point out that what the government said was incomplete, I'm
21 fine with that. My point is not to have sort of a surrebuttal
22 through limiting instruction, what they said was wrong, what he
23 said was right.

24 My point is just so that the jury has in front of it
25 the correct records because I think it's almost impossible for

E78LRAJ1

Trial

1 somebody without spending a lot of time and having a
2 significant education in how to read these records to read
3 them. I know the documents can be before the jury and maybe I
4 think there's somebody who's a quant on the jury, maybe he can
5 do it, but it is really hard to go through them. And it's not
6 fair for the last thing they hear about what happened on
7 March 26, such an important day, to be that Raj sold when in
8 fact his net position remained unchanged. So all I want is for
9 that fact to be clear.

10 MR. JACKSON: All I want is to be adopted by like a
11 billionaire, but that's not relevant to the question of whether
12 or not anything that Mr. Frey said was false.

13 Nothing Mr. Frey said was false. You don't get a
14 curative instruction just because you'd like the jury to focus
15 specifically on something else that you want to look at. And
16 it does matter to the argument that Mr. Gitner made because if
17 we look at what he actually said, he says, who sells stock at
18 under \$17 if you know it's going to 17 bucks a share. People
19 playing the market like everyone else. That's who.

20 But what actually happened on March 26 is that Raj
21 buys at 14 and sells at 15, netting himself a hundred thousand
22 dollar profit. So if that is the case, why was Raj selling?
23 The bottom line being Raj sold on that day. And the most
24 important point is what Mr. Frey said was literally accurate.
25 What Mr. Gitner said was literally inaccurate. And so it's up

E78LRAJ1

Trial

1 to the jury to look at whatever records they want that are
2 appropriate.

3 But we're having a completely different discussion
4 when we start -- let me just finish -- we're having a
5 completely different discussion when we're talking about
6 whether or not there should be a curative instruction. There
7 should only be a curative instruction if there was something
8 Mr. Frey said that was false, and he has not been able to point
9 to one thing that he said that was false.

10 MR. GITNER: Let me do that. "Raj's position did not
11 in fact remain unchanged." That's what he said.

12 MR. JACKSON: Accurate. When you buy --

13 MR. GITNER: Let me finish please, sir.

14 MR. JACKSON: That's not remaining unchanged.

15 MR. GITNER: The point is at the end of the day --
16 this is rebuttal summation, remember that -- my point was that
17 at the end of the day his position remained unchanged. That's
18 true. That's true. And it's untrue that his position did not
19 remain unchanged.

20 And also we don't know if Raj bought or sold first.
21 The timing of whether he bought or sold first is not in
22 evidence, and I don't think it's frankly findable based on the
23 OMS records. It's impossible to know if he bought or sold
24 first. All we know is that he bought and sold and made a
25 profit. It's unclear what Raj's motives were there. And all

E78LRAJ1

Trial

1 I'm asking for is that the facts be clear because they're not
2 right now based on what Mr. Frey said.

3 THE COURT: Look, I think I'm not inclined to give
4 this curative instruction because had the defense summation
5 ended with Raj's position remained unchanged, period, Mr. Frey
6 could not have said what he did, but it didn't end that way.
7 There were two references to Raj not selling. I don't think
8 that calling it false is appropriate.

9 But I think that if the jury gets into this issue in a
10 granular way, I would expect that we would receive a note from
11 them. If we receive such a note, they're going to get the
12 complete story. But I think that if they are that curious on
13 this issue, and if you're correct that there is nothing, no
14 exhibit that they could easily discern what actually happened
15 on March 26, they would ask us a question about it and at that
16 point they will learn that there was one trade that was a buy,
17 one trade that was a sell, that it was at the end of the day
18 Raj's funds were in the same numerical position as at the
19 beginning of the day.

20 I don't think I would be inclined to tell them about
21 the prices because of the fact that we don't know what the
22 order of the trades was in and the pricing would matter much
23 more depending on the order, what was first, what was the buy,
24 what was the sell. If we don't know that, I think there's a
25 limited argument, a limited good argument that can be made from

E78LRAJ1

Trial

1 that.

2 MR. JACKSON: Judge, we think the Court's ruling is
3 entirely appropriate. We think it's appropriate to point the
4 jury, if we get to that granular point you're describing,
5 whatever evidence will aid that. I'll note when we get to that
6 point, I think we may have a slightly different view of the
7 evidence. There is some information in the evidence that is in
8 evidence about timing of some of those transactions. But
9 that's not a discussion that we need to address right now.
10 We'll have the appropriate, if that comes up, that's an
11 appropriate thing we can figure out.

12 MR. GITNER: That's fine. I'm confident that the
13 evidence that's in evidence does not address the timing of when
14 the trades were actually made, just when they were booked. I
15 have no doubts about that, actually, but we can address that
16 later.

17 THE COURT: All right. Let me say one of the reasons
18 we're slightly delayed in coming down is that I had the joy of
19 rereading the charge on the train coming in this morning and
20 just noticed a couple of very small things. But let me just
21 tell you if I remember now what they were.

22 One on page, I think it's still page 10, with respect
23 to the transcripts, I've made it clear that they are getting,
24 instead of the transcripts, they're getting a computer with the
25 tapes on them.

E78LRAJ1

Trial

1 In terms of charts and summaries, we've taken out
2 references to either charts or summaries being based on
3 testimony since they aren't.

4 There's a reference at the end -- there was a sentence
5 that said if you want to see any of the exhibits that you don't
6 have, you can come back to court. There are no drugs and there
7 are no guns here so it's irrelevant. It just was a line I took
8 out.

9 We took out the reference to character evidence
10 because there was none.

11 And as we had discussed, we edited the limiting
12 instruction pursuant to our conversation yesterday.

13 I think that covers anything that we did between
14 Thursday and now.

15 MR. GITNER: Your Honor, I have a brief request. Just
16 looking at it this morning, on page 16, in the uncalled
17 witnesses charge, there's a sentence, just getting into it, you
18 should not draw any inferences or reach any conclusions about
19 what these uncalled witnesses would have testified to had they
20 been called. The next sentence concerns my request. It says,
21 their absence should not affect your judgment in any way.

22 I actually think that sentence should be deleted. I
23 think that I'm allowed to argue lack of evidence and that can
24 affect their judgment. And so I think the point of this is
25 that they shouldn't draw inferences about what someone would or

E78LRAJ1

Trial

1 wouldn't say. But the point of the charge, I think, is not
2 that whether their absence should affect their judgment. I
3 think I'm allowed to argue on the evidence or lack of evidence,
4 and this sentence I think is contrary to that.

5 So I'd ask that this sentence be deleted. I don't
6 think it affects the main thrust of the charge.

7 THE COURT: Well, you did bring up the point that the
8 government failed to call any Galleon witness. That was in
9 your --

10 MR. GITNER: Yes.

11 THE COURT: -- summation yesterday.

12 MR. GITNER: Yes.

13 THE COURT: The government, to balance it, there is
14 the investigative techniques charge, which --

15 MR. GITNER: The charge is actually quite balanced
16 that they don't need to do anything. But I think this
17 particular sentence is not quite right. So I'm asking this
18 sentence be deleted.

19 THE COURT: What he says makes sense to me.

20 MR. JACKSON: Can we just have a moment, your Honor.

21 Your Honor, we're fine with taking it out.

22 MR. GITNER: Thank you.

23 THE COURT: Elena reminds me that the defendant
24 decided not to request a description of the defense.

25 MR. GITNER: Yes.

E78LRAJ1

Trial

1 THE COURT: We just added the kind of standard
2 sentence at the top of 18 that the defendant denies the charge
3 against him and contends that the government has failed to
4 prove this charge beyond a reasonable doubt.

5 MR. GITNER: Thank you, Judge. Is that from the
6 standard? It sounds standard. I'm just wondering.

7 THE COURT: Elena specifically found that in Judge
8 Gardephe's charge and somebody else's. Judge Sullivan.

9 MR. GITNER: Good enough for me. Thank you.

10 MR. JACKSON: Your Honor, just one small thing that we
11 noticed this morning. On page 26 of the charge, your Honor
12 makes reference -- I'm actually not sure it's current page 26.

13 THE COURT: Just tell me what the paragraph begins
14 with.

15 MR. JACKSON: Absolutely, Judge. It's paragraph that
16 talks about essential element of the crime is intent.

17 THE COURT: Right.

18 MR. JACKSON: It says, it follows that good faith on
19 the part of the defendant is a complete defense to a charge of
20 securities fraud. That's the first time the term securities
21 fraud is used in the charge. Your charge makes clear that it's
22 the securities laws. We just thought that the fix for that,
23 just so there's no confusion --

24 THE COURT: Fine.

25 MR. JACKSON: -- would be when your Honor is

E78LRAJ1

Trial

1 explaining the element on page --

2 THE COURT: Why don't we just change it.

3 MR. GITNER: Change it to charge, is a complete
4 defense to the charge, period.

5 THE COURT: Works.

6 MR. JACKSON: I think that that would be potentially
7 fine, but I think it would be -- I personally think it would be
8 more accurate to just where your Honor says insider trading and
9 conspiracy to engage in insider trading the first time, just
10 say, comma, which is a form of securities fraud.

11 THE COURT: I am not charging that.

12 MR. JACKSON: That's fine, Judge.

13 MR. GITNER: Thank you, Judge. So we would just say
14 good faith on the part of the defendant is a complete defense
15 to --

16 THE COURT: -- this charge.

17 MR. GITNER: -- this charge. I think that works.
18 Thank you.

19 THE COURT: I guess we can bring the jury in now.

20 (Jury present)

21 THE COURT: Good morning, everyone.

22 Ladies and gentlemen, my duty at this point is to
23 instruct you as to the law. I will endeavor to be as clear as
24 possible. It is your duty to accept these instructions of law
25 as I give them to you and apply them to the facts as you

E78LRAJ1

Charge

1 determine them. I know that you will try the issues that have
2 been presented to you according to the oath which you have
3 taken as jurors in which you promised that you would well and
4 truly try the issues in this case and render a true verdict.

5 You should not single out any instruction as alone
6 stating the law, but you should consider my instructions as a
7 whole when you retire to deliberate in the jury room. To that
8 end, you will all be permitted to take a copy of these
9 instructions with you into the jury room.

10 You, the members of the jury, are the sole and
11 exclusive judges of the facts. You pass upon the weight of the
12 evidence; you determine the credibility of the witnesses; you
13 resolve any conflicts in the testimony; and you draw whatever
14 reasonable inferences you decide to draw from the facts as you
15 have determined them.

16 By the way, let me just say to the people in the
17 audience that if you choose to stay for the charge, you must
18 stay until the end. You cannot get up and down, so, okay.

19 The defendant in this case, Rengan Rajaratnam, entered
20 a plea of not guilty to the indictment. As I told you before,
21 the law presumes the defendant to be innocent of the charges
22 against him. I therefore instruct you that the defendant is to
23 be presumed by you to be innocent throughout your deliberations
24 until such time, if ever, you as a jury are satisfied that the
25 government has proven him guilty beyond a reasonable doubt.

E78LRAJ1

Charge

1 The burden is on the prosecution to establish the
2 defendant's guilt beyond a reasonable doubt with respect to
3 every element of the offense charged. The burden of proof
4 never shifts to a defendant in a criminal case, and the law
5 never imposes on a defendant the obligation of doing anything
6 in a criminal trial. Nor does the law impose on a defendant
7 the burden or duty of calling any witness or producing any
8 evidence. The presumption of innocence alone is sufficient to
9 require an acquittal of the defendant unless and until, after
10 careful and impartial consideration of all the evidence, you,
11 as jurors, unanimously are convinced of the defendant's guilt
12 beyond a reasonable doubt.

13 The question naturally comes up is what is a
14 reasonable doubt? The words almost define themselves. It is a
15 doubt founded in reason and arising out of the evidence in the
16 case or the lack of evidence. It is a doubt that a reasonable
17 person has after carefully weighing all of the evidence. Proof
18 beyond a reasonable doubt must therefore be proof of such a
19 convincing character that a reasonable person would not
20 hesitate to rely and act upon it in the most important of his
21 or her own affairs.

22 The law does not require that the government prove
23 guilt beyond all possible doubt; proof beyond a reasonable
24 doubt is sufficient to convict. Reasonable doubt is a doubt
25 that appeals to your reason, your judgment, your experience,

E78LRAJ1

Charge

1 your common sense. It is not caprice, whim, or speculation.
2 It is not an excuse to avoid the performance of an unpleasant
3 duty. It is not sympathy for the defendant.

4 If, after fair, impartial, and careful consideration
5 of all the evidence, you can candidly and honestly say that you
6 are not satisfied of the guilt of the defendant, that is, if
7 you have such a doubt as would cause you, as a prudent person,
8 to hesitate before acting in matters of importance to yourself,
9 then you have a reasonable doubt, and in that circumstance it
10 is your duty to acquit.

11 On the other hand, if, after a fair, impartial, and
12 careful consideration of all the evidence, you can candidly and
13 honestly say that you are satisfied of the guilt of the
14 defendant and that you do not have a doubt that would prevent
15 you from acting in important matters in the personal affairs of
16 your own life, then you have no reasonable doubt, and under
17 such circumstances you should convict.

18 The evidence before you consists of the answers given
19 by witnesses -- the testimony they gave, as you recall it --
20 the exhibits that were received in evidence, and the
21 stipulations entered into by the parties.

22 As I indicated to you at the beginning of the trial,
23 certain things are not evidence and must not be considered by
24 you in your deliberations.

25 First, the exhibits marked for identification but not

E78LRAJ1

Charge

1 received may not be considered by you as evidence.

2 Second, what lawyers say in their opening statements,
3 in closing arguments, or in objections is not evidence.

4 Similarly, you should bear in mind that a question put to a
5 witness is never evidence. It is only the answer that is
6 evidence. Be mindful that it is the duty of the attorney for
7 each side of a case to object when the other side offers
8 testimony or other evidence that the attorney believes is not
9 properly admissible. Nor is anything I may have said during
10 the trial or may say during these instructions with respect to
11 a matter of fact to be taken in substitution for your own
12 independent recollection, nor should you consider anything that
13 I have said or may say as indicating that I have an opinion as
14 to what your verdict should be. However, testimony that the
15 Court has excluded or told you to disregard is not evidence and
16 must not be considered. If you are instructed that some item
17 of evidence is received for a limited purpose only, you must
18 follow that instruction.

19 Third, anything that you have heard outside the
20 courtroom is not evidence and must be disregarded. You are to
21 decide the case solely on the evidence presented here in the
22 courtroom.

23 Fourth, any notes that you may take are not evidence.
24 Your notes may be used solely to assist you and are not to
25 substitute for your recollection of the evidence in the case.

E78LRAJ1

Charge

1 The fact that a particular juror has taken notes does not
2 entitle that juror's views to any greater weight than those of
3 any other juror.

4 A word about stipulations. In this case, you have
5 heard evidence in the form of stipulations that contain facts
6 that were agreed to be true. You must accept those facts as
7 true.

8 In this case, you also heard evidence in the form of
9 stipulations of testimony. A stipulation of testimony is an
10 agreement among the parties that, if called, a witness would
11 have given certain testimony. You are to treat stipulated
12 testimony just as if the witness actually appeared in court.
13 It is for you to determine the effect to be given that
14 testimony.

15 There are two types of evidence that you may properly
16 use in reaching your verdict.

17 One type of evidence is direct evidence. Direct
18 evidence is when a witness testifies about something he knows
19 by virtue of his own senses -- something he has seen, felt,
20 touched, or heard. Direct evidence may also be in the form of
21 an exhibit where the fact to be proved is its present existence
22 or condition.

23 Circumstantial evidence is evidence that tends to
24 prove a disputed fact by proof of other facts. There is a
25 simple example of circumstantial evidence that is often used in

E78LRAJ1

Charge

1 this courthouse.

2 Assume that when you came into the courthouse this
3 morning the sun was shining and it was a nice day. Assume that
4 the courtroom blinds were drawn and you could not look outside.
5 As you were sitting here, someone walked in with an umbrella
6 that was dripping wet. Then a few moments later another person
7 also entered with a wet umbrella. Now, you can not look
8 outside of the courtroom and you can not see whether or not it
9 is raining, so you have no direct evidence of that fact. But
10 on the combination of facts that I have asked you to assume, it
11 would be reasonable and logical for you to conclude that it had
12 been raining.

13 That is all there is to circumstantial evidence. You
14 infer on the basis of reason, experience, and common sense from
15 one established fact the existence or nonexistence of some
16 other fact.

17 Circumstantial evidence is of no less value than
18 direct evidence. You may consider both in reaching your
19 conclusion as to whether the government has proven its case
20 against the defendant.

21 Many material facts -- such as state of mind -- are
22 rarely susceptible of proof by direct evidence. Such facts may
23 be established by circumstantial evidence and the reasonable
24 inferences that you draw.

25 During the trial you have heard the attorneys use the

E78LRAJ1

Charge

1 term "inference," and in their arguments they have asked you to
2 infer by using your reason, experience, and common sense, the
3 existence of some fact from one or more established facts. An
4 inference is not a suspicion or a guess. It is a reasoned,
5 logical decision to conclude that the disputed fact exists on
6 the basis of another fact that you know exists. In drawing
7 inferences, you should use your common sense. There are times
8 when different inferences may be drawn from facts, whether
9 proved by direct or circumstantial evidence. The government
10 asks you to draw one set of inferences while the defense
11 attorneys ask you to draw another. Whether or not to draw a
12 particular inference is, of course, a matter exclusively for
13 you to determine, as are all determinations of fact.

14 You have heard testimony about and seen evidence
15 derived from telephone calls which were tape recorded without
16 the knowledge of the defendant and others, but with the consent
17 and authorization of the Court. All of this evidence was
18 lawfully obtained and properly admitted in this case and may
19 properly be considered.

20 In connection with these tapes, the parties have been
21 permitted to display transcripts of the recordings. These
22 documents were shown to you as an aid or guide to you in
23 listening to the recordings. However, they are not in and of
24 themselves evidence, and therefore may not be considered by you
25 during your deliberations. However, you will be provided with

E78LRAJ1

Charge

1 a computer on which you may play the tapes which have been
2 admitted into evidence.

3 During the trial, you have heard argument by counsel
4 that the government did not utilize specific investigative
5 techniques. There is no legal requirement that the government
6 use any specific investigative techniques to prove its case.
7 Your concern, as I have said, is to determine whether or not,
8 on the evidence or lack of evidence, the defendant's guilt has
9 been proved beyond a reasonable doubt.

10 You have been presented with exhibits in the form of
11 charts and summaries. These exhibits purport to summarize the
12 underlying evidence that was used to propose them and were
13 shown to you to make the other evidence more meaningful and to
14 aid you in considering the evidence. They are no better than
15 the documents upon which they are based and are not themselves
16 independent evidence. Therefore, you are to give no greater
17 weight to these charts and summaries than you would give to the
18 evidence on which they are based.

19 It is for you to decide whether the charts an
20 summaries correctly present the information contained in the
21 documents on which they were based. In the event that a chart
22 or summary differs from the actual documents on which the chart
23 or summary is based, you are to rely on the actual document and
24 not the chart or summary. You are entitled to consider the
25 charts and summaries if you find that they are of assistance to

E78LRAJ1

Charge

1 you in analyzing and understanding the evidence.

2 You have had an opportunity to observe all of the
3 witnesses. It is now your job to decide how believable each
4 witness was in his testimony. You are the sole judges of the
5 credibility of each witness and of the importance of his
6 testimony.

7 Your decision whether to believe a witness may depend
8 on how that witness impressed you. Was the witness candid,
9 frank, and forthright? Or did the witness seem as if he was
10 hiding something, being evasive, or suspect in some way? How
11 did the way the witness testified on direct examination compare
12 with how the witness testified on cross-examination? Was the
13 witness consistent in his testimony or did he contradict
14 himself? Did the witness appear to know what he was talking
15 about, and did the witness strike you as someone who was trying
16 to report his knowledge accurately?

17 How much you choose to believe a witness may be
18 influenced by the witness's bias. Does the witness have a
19 relationship with the government or the defendant that may
20 affect how he testified? Does the witness have some incentive,
21 loyalty, or motive that might cause him to shade the truth or
22 does the witness have some bias, prejudice, or hostility that
23 may have caused the witness -- consciously or not -- to give
24 you something other than a completely accurate account of the
25 facts he testified to?

E78LRAJ1

Charge

1 Even if the witness was impartial, you should consider
2 whether the witness had an opportunity to observe the facts he
3 testified about. Also ask yourselves whether the witness's
4 recollection of the facts stands up in light of all the other
5 evidence.

6 A witness may be inaccurate, contradictory or even
7 untruthful in some respects and yet may be entirely credible in
8 the essence of his testimony. It is for you to say whether his
9 testimony in this trial is truthful or not in whole or in part,
10 in light of his demeanor, statements, and all of the evidence.

11 Additionally, the fact that the prosecution is brought
12 in the name of the United States of America entitles the
13 government to no greater or no less consideration than that
14 accorded to any other party in the litigation. All parties,
15 whether the government or individuals, stand as equals under
16 the law.

17 You have heard testimony from government witnesses who
18 have pleaded guilty to the same or similar charges. You are
19 instructed, however, that you are to draw no conclusions or
20 inferences of any kind about the guilt of the defendant merely
21 from the fact that a witness for the prosecution or a
22 coconspirator pleaded guilty to the same or similar charges.
23 The decisions of those individuals to plead guilty were
24 personal decisions about their own guilt and may not be used by
25 you in any way to infer the defendant's guilt.

E78LRAJ1

Charge

1 You have heard the testimony of law enforcement
2 officers and of employees of the government. The fact that a
3 witness may be employed as a law enforcement officer or
4 government employee does not mean that his testimony is
5 necessarily deserving of more or less consideration or greater
6 or lesser weight than that of an ordinary witness. It is your
7 decision, after reviewing all the evidence, whether to accept
8 the testimony of the law enforcement witness and to give that
9 testimony whatever weight, if any, you find it deserves.

10 You have heard evidence during the trial that
11 witnesses have discussed the facts of the case and their
12 testimony with the lawyers before the witnesses appeared in
13 court. Although you may consider that fact when you are
14 evaluating a witness's credibility, I should tell you that
15 there is nothing either unusual or improper about a witness
16 meeting with lawyers before testifying so that the witness can
17 be aware of the subjects he will be questioned about, focus on
18 those subjects, and have the opportunity to review relevant
19 exhibits before being questioned about them. Such consultation
20 helps conserve your time and the Court's time. In fact, it
21 would be unusual for a lawyer to call a witness without such
22 consultation.

23 Again, the weight you give to the fact or the nature
24 of the witness's preparation for his testimony and what
25 inference you draw from such preparation are matters completely

E78LRAJ1

Charge

1 within your discretion.

2 The defendant did not testify in this case. Under our
3 Constitution, a defendant has no obligation to testify or
4 present any evidence because it is the prosecution's burden to
5 prove a defendant guilty beyond a reasonable doubt. As I
6 stated earlier, the burden remains with the prosecution
7 throughout the entire trial and never shifts to the defendant.
8 A defendant is never required to prove that he is innocent.
9 The right of a defendant not to testify is an important part of
10 our Constitution. It is for that reason that you may not
11 attach any significance to the fact that the defendant did not
12 testify. No adverse inference may be drawn against the
13 defendant because he did not take the witness stand. You may
14 not consider this against the defendant in any way in your
15 deliberations.

16 There are people whose names you heard during the
17 course of the trial who did not appear and testify. The
18 government is not required to prove its case through any
19 particular witnesses. Nor does the defendant have any burden
20 or duty to call any witnesses or produce any evidence. You
21 should not draw any inferences or reach any conclusions about
22 what these uncalled witnesses would have testified to had they
23 been called. Again, your concern is to determine whether, on
24 the evidence that has been admitted or the lack thereof, the
25 defendant's guilt has been proven beyond a reasonable doubt.

E78LRAJ1

Charge

1 Further, you are not being asked whether any person
2 other than the defendant here on trial has been proven guilty.
3 In that vein, you may not draw any inference, favorable or
4 unfavorable, toward the government or the defendant, from the
5 fact that certain persons are not on trial in this case. You
6 may not speculate as to why other people are not on trial
7 before you now.

8 Your verdict must be based solely on the evidence
9 developed at trial or the lack of evidence. It would be
10 improper for you to consider, in reaching your decision as to
11 whether the government sustained its burden of proof, any
12 personal feelings you may have about the defendant's or
13 witness's race, religion, national origin, sex or age. The
14 parties in this case are entitled to a trial free from
15 prejudice, and our judicial system cannot work unless you reach
16 your verdict through a fair and impartial consideration of the
17 evidence.

18 Your verdict may be based exclusively on the evidence
19 or lack of evidence in the case, for once you let fear or
20 prejudice, bias, or sympathy interfere with your thinking,
21 there is a risk that you will not arrive at a just and true
22 verdict.

23 With these preliminary instructions in mind, let us
24 now turn to instructions of law.

25 The indictment charges the defendant, Rengan

E78LRAJ1

Charge

1 Rajaratnam, with conspiring to violate the securities laws by
2 engaging in what is referred to as insider trading. The
3 defendant denies the charge against him and contends that the
4 government has failed to prove this charge beyond a reasonable
5 doubt. As I instructed you at the outset of this case, the
6 indictment is a charge or accusation. It is not evidence, and
7 it is not to be considered by you as any evidence of the guilt
8 of the defendant.

9 A conspiracy is a kind of criminal partnership -- an
10 agreement of two or more persons to join together to accomplish
11 some unlawful purpose.

12 Here, the conspiracy charged is alleged to be an
13 agreement in 2008 between Rengan Rajaratnam and his brother Raj
14 Rajaratnam and others known and unknown to violate the
15 securities laws of the United States by engaging in insider
16 trading.

17 The actual commission of a substantive crime is not an
18 essential element of the crime of conspiracy. Rather, the
19 coconspirators must simply have agreed to commit a scheme that,
20 if carried out, would have met all the requirements of the
21 crime of insider trading, as I will define it for you. Indeed,
22 you may find the defendant guilty of the crime of conspiracy
23 even if you find that the charged conspiracy was not successful
24 and no insider trading was ever actually committed.

25 I will now instruct you about the elements of the

E78LRAJ1

Charge

1 conspiracy offense.

2 To sustain its burden of proof on the charge of
3 conspiracy, the government must prove each of the following
4 elements beyond a reasonable doubt:

5 First, the existence of the conspiracy charged in the
6 indictment; that is, an agreement or understanding among at
7 least two people to commit insider trading.

8 Second, the government must prove beyond a reasonable
9 doubt that the defendant knowingly became a member of the
10 conspiracy, with intent to further its illegal purpose.

11 Third, the government must prove beyond a reasonable
12 doubt that one of the coconspirators -- not necessarily the
13 defendant -- knowingly committed at least one overt act in
14 furtherance of the conspiracy.

15 Now let us separately consider these elements.

16 As I just indicated, the first element that the
17 government must prove beyond a reasonable doubt to establish
18 the offense of conspiracy is that two or more persons entered
19 into the unlawful agreement alleged in the indictment. In
20 other words, the government must prove that there is in fact --
21 excuse me. Let me just say that again. In other words, the
22 government must prove that there in fact was an agreement or
23 understanding to violate those provisions of the law which make
24 it unlawful to engage in insider trading. The first element of
25 the crime of conspiracy thus has two parts: one, the unlawful

E78LRAJ1

Charge

1 agreement; and, two, the object of the conspiracy.

2 Now, the government is not required to show that two
3 or more people sat around a table and entered into a solemn
4 pact, orally or in writing, stating that they had formed a
5 conspiracy to violate the law and spelling out all the details.
6 Common sense tells you that when people in fact agree to enter
7 into a criminal conspiracy, much is left to the unexpressed
8 understanding. It is rare this a conspiracy can be proven by
9 direct evidence of an explicit agreement.

10 In order to show that a conspiracy existed, the
11 evidence must show that two or more people, in some way or
12 manner, through any contrivance, explicitly or implicitly, that
13 is, spoken or unspoken, came to a mutual understanding to
14 violate the law and to accomplish an unlawful plan.

15 When people enter into a conspiracy to accomplish an
16 unlawful end, they became agents or partners of one another in
17 carrying out the conspiracy. In determining whether there has
18 been an unlawful agreement as alleged, you may consider the
19 acts and conduct of the alleged coconspirators that were done
20 to carry out the apparent criminal purpose. In addition, in
21 determining whether such an agreement existed, you may consider
22 direct as well as circumstantial evidence. The old adage,
23 "actions speak louder than words," applies here. Often, the
24 only evidence that is available with respect to the existence
25 or nonexistence of the conspiracy is that of disconnected acts

E78LRAJ1

Charge

1 and conduct on the part of the alleged coconspirators. When
2 taken all together and considered as a whole, however, those
3 acts and conduct may warrant the inference that a conspiracy
4 existed or did not exist as conclusively as would direct proof.
5 On this question, you should refer back to my earlier
6 instructions on direct and circumstantial evidence and
7 inferences.

8 So you must first determine whether the evidence
9 proves beyond a reasonable doubt the existence of the
10 conspiracy charged in the indictment. It is sufficient to
11 establish the existence of the conspiracy, as I've said -- as I
12 have already said, if, from the proof of all the relevant facts
13 and circumstances, you find beyond a reasonable doubt that the
14 minds of Rengan Rajaratnam and at least one other alleged
15 coconspirator met to accomplish, by the means alleged, the
16 objectives of the conspiracy. In this case, the government
17 alleges that there was a meeting of the minds between Rengan
18 Rajaratnam and Raj Rajaratnam.

19 The second part of the first element relates to the
20 object, or objective, of the conspiracy -- some illegal goal
21 that the members of the conspiracy agree they will try to
22 accomplish. The conspiracy charged has as its object a scheme
23 to engage in insider trading.

24 In order to establish the object of the conspiracy,
25 the government must prove beyond a reasonable doubt that two or

E78LRAJ1

Charge

1 more coconspirators agreed to obtain, in or about 2008,
2 material nonpublic information from one or more companies for
3 the purpose of trading on the companies' stock, knowing that
4 the information had been obtained from an insider who had
5 provided the information in violation of that insider's duty of
6 trust and confidence and in exchange for or in anticipation of
7 a person benefit.

8 An "insider" is one who comes into possession of
9 material, nonpublic information about a specific security or
10 stock by virtue of a relationship that involves trust and
11 confidence. Such a relationship can, for example, arise out of
12 a person's employment relationship with a company, or out of a
13 client relationship, or out of a relationship as a board member
14 to a company. The law forbids an insider, who is expected to
15 keep certain information confidential, from trading in the
16 securities in question or assisting others to trade in
17 securities on the basis of that information.

18 The law also prohibits a person who is not actually an
19 insider from trading in securities based on material, nonpublic
20 information, if the person, who is known as a tippee, knowingly
21 received material, nonpublic information from other individuals
22 and wrongfully used it for his own benefit when he knew that
23 the inside information had been disclosed in violation of a
24 duty of trust or confidence and in exchange, directly or
25 indirectly, for a personal benefit. The benefit may be, but

E78LRAJ1

Charge

1 need not be, financial or tangible in nature. It could
2 include, for example, obtaining a useful networking contact,
3 enhancing a witness's reputation or power, obtaining future
4 financial benefits, or maintaining or furthering a friendship.

5 Information is nonpublic if it was not available to
6 the public or authorized to be disclosed to the public through
7 such sources as press releases, Securities and Exchange
8 Commission filings, trade publications, analyst reports,
9 newspapers, magazines, television, radio, word of mouth, or in
10 response to requests. The confirmation by an insider of
11 unconfirmed facts or rumors may itself be inside information.
12 However, the law permits analysts and portfolio managers to
13 meet and speak with corporate officers and other insiders, as
14 well as experts affiliated with such companies, in order to
15 ferret out and analyze information useful in making investment
16 decisions.

17 Information is "material" if a reasonable investor
18 would have considered it significant in deciding whether to
19 buy, sell, or hold securities, and at what price to buy or sell
20 securities.

21 An insider trading scheme involves the use of the
22 material, nonpublic information in connection with a stock
23 purchase or sale of securities -- in other words, the
24 information would be at least a factor in the decision to buy
25 or sell. An insider trading scheme must also involve the use

E78LRAJ1

Charge

1 of an instrumentality of interstate commerce, in other words,
2 the mails, telephone, wire, or any device or facility that can
3 be used to transmit information or communications across state
4 borders, or of a national securities exchange, such as, for
5 example, the New York Stock Exchange or the NASDAQ, in
6 furtherance of the scheme. This might include placing a
7 telephone call or placing an order with a trader or a brokerage
8 firm to buy or sell a security on a national exchange.

9 If you conclude that the government has proven beyond
10 a reasonable doubt that the charged conspiracy existed and that
11 the conspiracy had as its object the illegal purpose charged in
12 the indictment, then you must next determine whether Rengan
13 Rajaratnam joined in the conspiracy with knowledge of its
14 unlawful purpose and in furtherance of its unlawful objective.
15 The government must prove beyond a reasonable doubt that Rengan
16 Rajaratnam unlawfully, knowingly, and intentionally became a
17 member of the charged conspiracy.

18 "Knowingly" means to act voluntarily and deliberately,
19 rather than mistakenly or inadvertently. "Intentionally" means
20 to act deliberately and with a bad purpose, rather than
21 innocently, and to act with an intent to defraud and thereby
22 harm the company from which the inside information was
23 obtained.

24 The question of the defendant's intent is a question
25 of fact that you are called upon to decide, just as you

E78LRAJ1

Charge

1 determine any other fact at issue. A person's intent involves
2 the state of his mind and the purpose with which he acted at
3 the time of the -- start that again. A person's intent
4 involves the state of his mind and purpose with which he acted
5 at the time the acts in question occurred. Direct proof of
6 knowledge and intent is almost never available, and it is not
7 required to find that such proof exists. It would be a rare
8 case where it could be shown that a person wrote or stated that
9 as of a given time in the past he had committed an act with
10 fraudulent intent. Such direct proof is not required.

11 Knowledge and criminal intent, though subjective, may
12 be established by circumstantial evidence, based on a person's
13 outward manifestations, his words, his conduct, his acts, and
14 all the surrounding circumstances disclosed by the evidence and
15 the rational or logical inferences that may be drawn therefrom.

16 Since an essential element of the crime charged is
17 intent to defraud, it follows that good faith on the part of
18 the defendant is a complete defense to this charge. It is for
19 you to decide whether the defendant acted in good faith or not.
20 If you decide that the defendant at all relevant times acted in
21 good faith, it is your duty to acquit him. The law is not
22 violated if the defendant acted in good faith and held an
23 honest belief that his actions were proper and not in
24 furtherance of any illegal venture. In this respect, I would
25 remind you that the defendant has no burden to establish the

E78LRAJ1

Charge

1 defense of good faith, however. The burden is on the
2 government to prove criminal intent and consequent lack of good
3 faith beyond a reasonable doubt.

4 I want to caution you that mere knowledge or
5 acquiescence, without participation, in the unlawful plan is
6 not sufficient. Moreover, the fact that the acts of a
7 defendant, without knowledge, merely happen to further the
8 purposes or objectives of the conspiracy, does not make the
9 defendant a member. What is necessary is that the defendant
10 must have participated in the conspiracy with knowledge of its
11 unlawful objective and with the intention of aiding in the
12 accomplishment of that objective.

13 It is for important for you to note that a defendant's
14 participation in the conspiracy must be established by evidence
15 of his own acts or statements. However, you may consider the
16 defendant's acts and statements in the context of the acts and
17 statements of the alleged other conspirators, and the
18 reasonable inferences that may be drawn therefrom.

19 To become a member of the conspiracy, the defendant
20 need not have known the identifies of each and every other
21 member, nor need he have been apprised of all their activities.
22 In fact, a defendant may know only one other member of the
23 conspiracy and still be a coconspirator. Moreover, the
24 defendant need not have been fully informed as to all of the
25 details, or the scope, of the conspiracy in order justify an

E78LRAJ1

Charge

1 inference of knowledge on his part.

2 Nor is it necessary that the defendant receive any
3 monetary benefit from participating in the conspiracy. While
4 proof of a financial interest in the outcome of a conspiracy is
5 not essential, if you find that the defendant had such an
6 interest, that determination is a factor which you may properly
7 consider in determining whether or not the defendant was a
8 member of the conspiracy charged in the indictment.

9 If you determine that the defendant became a member of
10 the conspiracy, the extent of his participation in that
11 conspiracy has no bearing on the issue of his guilt. A
12 conspirator's liability is not measured by the extent or
13 duration of his participation. Indeed, each member may perform
14 separate and distinct acts and may perform them at different
15 times. Some coconspirator -- I'm sorry. Some conspirators
16 play major roles, while others play minor roles in the scheme.
17 An equal role is not what the law requires. In fact, even a
18 single act may be sufficient to draw the defendant within the
19 ambit of the conspiracy.

20 I want to caution you, however, that a defendant's
21 mere association with one or more members of the conspiracy
22 does not automatically make the defendant a member himself. A
23 person may know, be friendly with, be a colleague of, or be
24 related to a criminal without being a criminal himself. Mere
25 similarity of conduct or the fact that they may have assembled

E78LRAJ1

Charge

1 together and discussed common aims and interests does not
2 necessarily establish membership in a conspiracy.

3 It is not required that the government show that the
4 defendant, in addition to knowing what he was doing and
5 deliberately doing it, also knew that he was violating some
6 particular federal statute. But to meet its burden, the
7 government must establish beyond a reasonable doubt that the
8 defendant acted with the intent to help carry out some
9 essential step in the execution of the scheme to defraud that
10 is alleged in the indictment.

11 The third element that the government must prove
12 beyond a reasonable doubt is that at least one of the
13 conspirators -- not necessarily the defendant -- committed at
14 least one overt act in furtherance of the conspiracy, during
15 the time that the conspiracy was in existence. The overt act
16 element is a requirement that the agreement went beyond the
17 mere talking stage, the mere agreement stage.

18 This burden may be met by the government showing that
19 Rengan Rajaratnam or one of his coconspirators knowingly and
20 willfully committed an overt act in furtherance of the
21 conspiracy. This is because such an act becomes, in the eyes
22 of the law, the act of all the members of the conspiracy.

23 However, you must all agree on at least one overt act
24 that a conspirator committed in order to satisfy this element.
25 In other words, it is not sufficient for you to agree that some

E78LRAJ1

Charge

1 overt act was committed without agreeing on which overt act was
2 committed.

3 You should bear in mind that the overt act, standing
4 alone, may be an innocent, lawful act. You are therefore
5 instructed that the overt act does not have to be an act which
6 in and of itself is criminal or constitutes an objective of the
7 conspiracy.

8 Finally, in considering whether the government has
9 proven the charged conspiracy and whether the government has
10 proven the defendant's participation in the charged conspiracy,
11 you may not rely on evidence of the defendant's trades in
12 Clearwire securities, but you may consider other evidence
13 related to Clearwire in deciding whether the government has
14 proven the charged conspiracy and the defendant's participation
15 in the charged conspiracy.

16 As I mentioned to you throughout this trial, you have
17 heard references to companies other than Clearwire and AMD on
18 some of the wiretapped phone calls. These references included
19 Cisco, EMC, and other companies. This evidence was not
20 introduced to show that the defendant engaged in insider
21 trading in those stocks and there is no evidence that he did.

22 Now, in addition to dealing with the elements of the
23 conspiracy, you must also consider the issue of venue, namely,
24 whether any act in furtherance of the unlawful activity
25 occurred within the Southern District of New York. The

E78LRAJ1

Charge

1 Southern District of New York encompasses Manhattan, the Bronx,
2 Westchester, Rockland, Putnam, Dutchess, Orange, and Sullivan
3 County. So, anything that occurs in those counties occurs in
4 the Southern District of New York.

5 In this regard, the government need not prove that the
6 crime itself was committed in this district or that the
7 defendant himself was present here. It is sufficient to
8 satisfy this element if any act in furtherance of the crime
9 occurred within this district. Such an act would include, for
10 example, the placing of a telephone call to or from the
11 Southern District of New York or the execution or settlement of
12 a securities trade within this district.

13 I note that on this issue, and this issue alone, the
14 government need not offer proof beyond a reasonable doubt and
15 that it is sufficient if the government proves venue by a mere
16 preponderance of the evidence. A preponderance of the evidence
17 means to prove that the fact is more likely than not true.
18 Thus, the government has satisfied its venue obligations if you
19 conclude that it is more likely than not that any act in
20 furtherance of the crime you are considering occurred within
21 the Southern District of New York.

22 The government, to prevail, must prove each essential
23 element of the crime charged beyond a reasonable doubt. To
24 report a verdict, it must be unanimous.

25 Each juror is entitled to his or her opinion; each

E78LRAJ1

Charge

1 should, however, exchange views with his or her fellow jurors.
2 That is the very purpose of jury deliberation -- to discuss and
3 consider the evidence; to listen to the arguments of fellow
4 jurors; to present your individual views; to consult with one
5 another; and to reach an agreement based solely and wholly on
6 the evidence -- if you can do so without violence to your own
7 individual judgment.

8 Each of you must decide the case for yourself, after
9 consideration with your fellow jurors of the evidence in the
10 case. But you should not hesitate to change an opinion which,
11 after discussion with your fellow jurors, appears erroneous.

12 However, if, after carefully considering all the
13 evidence and the arguments of your fellow jurors, you entertain
14 a conscientious view that differs from the others, you are not
15 to yield your conviction simply because you are outnumbered.

16 Your final vote must reflect your conscientious
17 conviction as to how the issues should be decided.

18 I want to say a word about punishment and sentencing.
19 The question of possible punishment of the defendant is of no
20 concern to the jury and should not, in any sense, enter into or
21 influence your deliberations. The duty of imposing sentence
22 rests exclusively with the Court. Your function is to weigh
23 the evidence in the case and to determine whether or not the
24 defendant is guilty beyond a reasonable doubt, solely on the
25 basis of such evidence. Under your oath as jurors, you cannot

E78LRAJ1

Charge

1 allow a consideration of the punishment which may be imposed
2 upon the defendant, if convicted, to influence your verdict in
3 any way or in any sense enter into your deliberations.

4 Now that I have charged you as to what the law is, you
5 are about to go into the jury room and begin your
6 deliberations. I am going to have the exhibits that have been
7 admitted into evidence brought to you in the jury room. If you
8 want to review any of the testimony, that can also be done if
9 you send us a note. But, please remember that it is not always
10 easy to locate what you might want, so be as specific as you
11 possibly can in requesting portions of the testimony that you
12 may want.

13 I will also give you a copy of -- a number of copies
14 of this charge on the law for use during your deliberations.
15 If you feel that you need any of the legal principles clarified
16 during your deliberations, I will be happy to do so.

17 Your requests for testimony or for additional
18 instructions on the law -- in fact, any communication with the
19 Court -- should be made to me in writing, signed by your
20 foreperson, and given to one of the court officers. I will
21 respond to any questions or requests that you have as promptly
22 as possible, either in writing or by having you return to the
23 courtroom so I can speak with you in person. In any event, do
24 not tell me or anyone else how the jury stands on the issue of
25 the defendant's guilt until after a unanimous verdict is

E78LRAJ1

Charge

1 reached.

2 At this time I want to tell you that juror No. 1,
3 Isabel Tirado, will serve as the jury's foreperson. The
4 foreperson will be responsible for signing all communications
5 to the Court on behalf of the jury and for handing them to the
6 marshal during your deliberations. This should not be
7 understood to mean that an individual cannot send the Court a
8 note should the foreperson refuse to do so. After you have
9 reached a verdict, your foreperson will advise the officer
10 outside your door that you are ready to return to the
11 courtroom.

12 I will stress once again that each of you should be in
13 agreement with the verdict that is announced in court. Once
14 your verdict is announced by your foreperson in open court and
15 officially recorded, it cannot ordinarily be revoked.

16 The custom and tradition in this court requires,
17 although I know it is totally unnecessary, that I admonish you
18 to be polite and respectful towards each other in the course of
19 your discussions in the jury room so that each juror will have
20 his or her position made clear and so that when you reach a
21 verdict you will know that it is a just one.

22 Finally, let me state that your oath sums up your duty
23 and that is: without fear or favor to anyone, you will well
24 and truly try the issues between the government and the
25 defendant, based solely on the evidence and this Court's

E78LRAJ1

Charge

1 instructions as to the law.

2 Let me ask counsel if there's anything we need to talk
3 about on the charge.

4 MR. JACKSON: No, your Honor.

5 MR. GITNER: One moment, Judge.

6 Thank you, your Honor.

7 THE COURT: All right. There are 13 of you left
8 standing, but a jury can only be 12. So at this time I'm going
9 to inform Mr. Jones that you're actually the alternate. You
10 are not, however, excused. You may leave, but you're not
11 legally excused.

12 What that means is that should it happen, and
13 occasionally it does, that during deliberations somehow we lose
14 a juror, we will need to call you back in. So that means that
15 the admonition that you can't talk about the case continues.
16 We will, I promise, call you within, you know, 15 minutes of
17 there being a verdict to let you know what it is and to let you
18 know that you're really excused.

19 But before you go I want to thank you for your
20 service. We talked a little bit about that Thursday. That's
21 essentially what I say to all jurors. We very much appreciate
22 your attention and your time and your taking the time out of
23 your normal life to participate in this really special American
24 tradition of jury service. And, again, on behalf of the entire
25 court and the parties, we thank you.

E78LRAJ1

Charge

1 So I think we have to swear in the marshal, the court
2 officer.

3 (Marshal sworn)

4 THE COURT: So as I said, just practically, the
5 exhibits are going to be brought to you, you're going to be
6 given verdict forms, you already have note pads. There are, I
7 understand, envelopes which you can put any note already in the
8 jury room. You're going to get the scrubbed computer that only
9 has the tapes that were admitted into evidence. Your snack
10 should come on time. And I don't know if there are any other
11 details at this point that we need to talk about.

12 So the moment, in a sense, that you've been waiting
13 for to be able to talk is a moment away, but let Mr. Jones
14 leave before you start to deliberate. You don't have to walk
15 out. Just when you leave, before you guys talk, just say
16 good-bye, say it was nice to meet you and let him go, okay.

17 We have cell phone for you, contact information,
18 right, in case we need contact you, right, Mr. Jones?

19 JUROR: Yes.

20 THE COURT: Okay. Great. Thank you.

21 (Jury retired to deliberate; time noted: 10:30 a.m.)

22 MR. JACKSON: Your Honor, just to clarify, and I'm
23 sure when your clerks pass all the exhibits over they can
24 explain this, but the scrubbed computer doesn't actually
25 contain the recordings. The parties have assembled disks that

E78LRAJ1

1 have all the recordings, which are marked, and the computer can
2 play all the recordings. It's of no moment. There's a
3 password that's on the computer; it's pasted on there. It's
4 very simple.

5 MR. GITNER: Before I discuss that, Judge, I didn't
6 want to do it in front of the jury. I just want to repeat just
7 for the record my -- I'll phrase them as exceptions. To the
8 extent that I had made certain requests like multiple
9 conspiracy charge, I think to make my record more perfect I
10 need to repeat that now just to state that I have made those
11 exceptions. I would request them again. I understand your
12 Honor is denying them and is not going to do that.

13 I think we have, with regard to the tapes, I do think
14 we've worked together and created a disk and index. I think we
15 have one dispute about one item on the index that might make
16 sense for the lawyers to talk about before this stuff goes
17 back. And I think we just have to look at the paper exhibits,
18 that shouldn't take long, and they can go back.

19 I think that was it. Your Honor, could we get a copy
20 of the verdict sheet?

21 THE COURT: We gave it to you yesterday.

22 MR. GITNER: I think I saw it but I think in the
23 confusion we -- I can't find it.

24 (Continued on next page)

E78GRAJ2

Trial

1 MR. GITNER: Thank you.

2 THE COURT: Could I get clarification. Are the
3 exhibits ready to go back?

4 MR. GITNER: They are. I think literally we need to
5 put our eyes on it and then it can go back. One last thing,
6 one thing. I know it's the government's computer that's been
7 scrubbed, but I'm not sure where the speakers are. I actually
8 thought they would come with better speakers than just the
9 single computer. I'm not sure if the government then brought
10 speakers for the computer.

11 MR. JACKSON: We can bring up some extra speakers if
12 that will be helpful. I'll get them after we bring the
13 computer in there, then we did use that. It will be simple.
14 It will be easy to plug in. In fact, I assume as defense
15 counsel is doing its duties, we can retrieve extra speakers.

16 MR. GITNER: Thank you. That's it.

17 I think we have to discuss something. There's one
18 issue on the index that I think there was some disagreement
19 over. We have to figure that out.

20 (Recess pending verdict)

21 (In open court; jury not present)

22 MR. JACKSON: We have a dispute because we removed,
23 pursuant to your Honor's order regarding the Clearwire trades
24 from the government exhibits, the chart which depicted Rengan
25 Rajaratnam's personal trades in his Fidelity account. We took

E78GRAJ2

Trial

1 that out. We also took out another related chart to that
2 compensation.

3 What we do still have are two charts the defense
4 objects to, Government Exhibits 24 and 25 which depict trading
5 in Clearwire by certain Galleon portfolio manager codes from
6 March 24 through April 21, 2008 and a second one depicts the
7 realized profit or loss during that same time period.

8 Mr. Gitner's objection is that the very last entry on
9 this chart is a 657 -- it's an almost negligible trade that
10 occurred on 4/21, 2008, Mr. Gitner says that it's his belief
11 that that's Rengan Rajaratnam's trade.

12 What we have said is, we don't think that there's any
13 evidence in the record supporting that that's his trade and so
14 these charts don't need to be altered in any way in order to go
15 back to the jury.

16 However, we offer, if the defendant likes, we'd be
17 willing to redact that trade from it and have the charts
18 offered as redacted. But the defense is suggesting that the
19 entirety of these charts needs to be removed when they have
20 clearly been the subject of a lot of discussion at the trial,
21 and I don't think they run afoul of your Honor's order in any
22 way.

23 MR. GITNER: It's not quite my objection. I don't
24 have a copy. If I can borrow it? We agree the charts mark 14,
25 26 and 27 are not going to go back pursuant to your Honor's

E78GRAJ2

Trial

1 order. So what's at issue are Exhibits 24 and 25. Twenty-four
2 is a chart that --

3 THE COURT: Which ones are not going back?

4 MR. GITNER: We have agreed that Government Exhibits
5 14, 26 and 27 are not going back.

6 What's at issue are 24 and 25. If it's okay, I'm
7 going to talk about 25 first because I have it in front of me.
8 This is the one that is realized profit or loss from trading in
9 Clearwire, associated with certain Galleon portfolio manager
10 codes from March 24 through April 21, 2008. And although it
11 ends on April 21, 2008, the government clearly has argued that
12 Rengan had some control over BCR prior to April 21, 2008.

13 The second -- the second chart, 24, my objection is
14 the same: It's not just that I can prove, which I did, that
15 Rengan regained control by April 21. It's that the government
16 has argued that Rengan had control before then. And prior to
17 my proving that by Bear Stearns and the loss be with it was the
18 government's position I think that Rengan had some control over
19 BCR much earlier, in fact, they didn't put in any proof about
20 Rengan losing control. Without me, the jury would think that
21 he had control the entire time over BCR.

22 So I think these charts as government exhibits are
23 misleading. They're not just misleading, but they concern what
24 the government has said are Rengan's trades. And I think your
25 Honor's order was that Rengan's trades are not proof of

E78GRAJ2

Trial

1 Rengan's participation in the conspiracy. And my memory of
2 when we discussed this earlier was that the charts about
3 Clearwire trading were not going to go back, so that's my
4 objection.

5 I can hand these back to the government if they want
6 to talk about.

7 MR. JACKSON: If what defense counsel just said is
8 confusing, I think it's because it doesn't really make sense.

9 THE COURT: You can't have it both ways.

10 It's accurate, is it not, that it was only the defense
11 that put in evidence that Rengan lost trading authority over
12 his portion of the Buccaneer fund?

13 MR. JACKSON: Yes, your Honor, that's their theory.

14 MR. GITNER: Exactly.

15 MR. JACKSON: I'm not sure what that "exactly" refers
16 to, but my only point, your Honor, is that there has clearly
17 been --

18 THE COURT: So, if you take the opposite position,
19 then these charts reflect Rengan's trading in Clearwire, which
20 you may not argue from and you may not give the jury exhibits
21 reflecting.

22 MR. JACKSON: Judge, we haven't taken the opposite
23 position. We put evidence in that showed that BCR was his
24 general trading code. They put in evidence showing that he was
25 demoted during this time period, and we haven't contested that

E78GRAJ2

Trial

1 evidence at all. So what this reflects is what is very
2 relevant to the case: Galleon, Raj's activity in Clearwire
3 throughout this time period.

4 The only reason that there's reason to believe that
5 the BCR trade, which is the last one on here which is almost
6 negligible, the 4/21 BCR trade of just 657 shares, the only
7 reason there's reason to believe that trade is attributable to
8 Rengan is because after proving up that Mr. Rengan
9 Rajaratnam --

10 THE COURT: The BCR trades are going back, those are
11 Rengan trades, right?

12 MR. JACKSON: No. The defense has --

13 THE COURT: Wait a second. Your exhibit?

14 MR. JACKSON: Yes, your Honor, but he has stated those
15 are Raj's trades and we haven't contested that.

16 MR. GITNER: They actually did.

17 Mr. Jackson himself, in cross-examining Mr. Sito, who
18 was the witness who testified about what happened, challenged
19 his credibility, challenged his bias. Mr. Jackson himself did
20 that. They have stated that.

21 And I have no burden. If I had sat here and done
22 nothing, what would this chart say? And what if some juror on
23 there decided to tune me out every time I spoke? That's the
24 danger of this chart.

25 MR. JACKSON: That's a mischaracterization of what

E78GRAJ2

Trial

1 happened with Mr. Sito. The fact that I cross-examined
2 Mr. Sito does not mean that I ever said, and by the way no
3 questions will be evidence anyway, but I never posed a question
4 to him suggesting that this was actually Rengan's trading. We
5 haven't contested that this was Raj's trade.

6 THE COURT: You didn't create this chart believing
7 that Rengan had nothing to do with the purchase of Clearwire on
8 March 24 and March 25.

9 MR. JACKSON: Judge --

10 THE COURT: Because there would be no purpose in your
11 creating this chart this way unless you believed that this was
12 his trade, not the block trade by Raj divided in three ways.

13 MR. JACKSON: No, your Honor, we respectfully
14 disagree.

15 From our perspective, this is relevant to show what
16 Galleon, what Raj was doing. Raj's trading in Clearwire
17 throughout this time period is relevant in this case; and it's
18 also admissible under your Honor's ruling, which speaks to the
19 conspiracy in this case.

20 We have not contested their theory that this is all
21 Raj's trading, but to excise from the case charts that reflect
22 what was happening at Galleon that don't specifically reference
23 Rengan trading, your Honor, will create an unfair depiction of
24 what is going on, and what is going on in terms of Raj's
25 trading is relevant. It's critical to the conspiracy.

E78GRAJ2

Trial

1 THE COURT: The jury wants Government Exhibits 514,
2 516 and 518.

3 (At 11:00 a.m., a note was received from the jury)

4 MR. GITNER: 514, 516 and 518?

5 THE COURT: Yes. Plus they want the charge. Can we
6 get that to them? Get it in.

7 MR. JACKSON: We're just waiting on defense to
8 finalize the redactions on the disk.

9 MR. GITNER: I think they'll have all of them in just
10 a few moments.

11 MR. JACKSON: Just to put Government Exhibit 25 in its
12 context, far from smearing the defendant, this chart doesn't
13 even depict any profit being made in Buccaneer.

14 Even if you assumed, as defense is attempting to
15 suggest, that the jury might construe this as some of Rengan's
16 trading, that portion of it is consistent with the defense
17 argument, but it doesn't, it doesn't in any way suggest that
18 Rengan was involved --

19 THE COURT: Can we get them what you guys have agreed
20 to because they obviously want to get to work.

21 MR. JACKSON: Yes. We're just waiting for the
22 process.

23 THE COURT: I expected this to all be done, counsel.
24 I really had.

25 MR. GITNER: We apologize, your Honor.

E78GRAJ2

Trial

1 MR. JACKSON: Your Honor, to go back to the bottom
2 line with regard to these charts --

3 THE COURT: Aren't there a lot of other exhibits?

4 MR. GITNER: I think we can send the paper exhibits
5 back.

6 MR. JACKSON: We have all of our recordings ready. We
7 can send our recordings back and that will be responsive to
8 request.

9 THE COURT: What's the problem?

10 MR. GITNER: There was a tape that apparently wasn't
11 redacted the right way that the government noticed, so we had
12 to redact it now and they're burning it right now. It's not
13 like you can just cross it out. You have to sort of process
14 that has to happen to redact it so it works. So we have
15 somebody from Doer here doing it now and he's literally tapping
16 as we speak. We can send back all of the paper exhibits and
17 then the disk can go back in a few minutes.

18 MR. JACKSON: Perhaps we can start the set-up of the
19 computer. If we can have permission -- I don't know if one of
20 your law clerks want to do it or Ms. Hernandez can do it with
21 instructions not to speak to the jury.

22 MS. HERNANDEZ: There are instructions.

23 MR. JACKSON: We can give the computer.

24 MR. GITNER: And the paper exhibits.

25 MR. JACKSON: They can start setting it up.

E78GRAJ2

Trial

1 MR. GITNER: The disk will be on its way in a minute
2 or two.

3 MR. JACKSON: May I say a quick couple of things about
4 this. Your Honor's ruling, which the government completely
5 understood and corresponded with by voluntarily removing all of
6 those -- we took it upon ourselves to make sure we removed from
7 our submitted exhibits all of the exhibits that referenced
8 Rengan's tradings. Your Honor's ruling was with respect to
9 Clearwire trades done by Rengan Rajaratnam.

10 Now, it's the government's position that there is no
11 evidence in the record, excepting what the defense put in, that
12 identifies these as Rengan Rajaratnam's.

13 THE COURT: If the jury sees BCR, what thought process
14 do you think they could go through and conclude that BCR does
15 not mean Rengan?

16 MR. JACKSON: Because the defense spent a huge
17 percentage of their case throughout the case emphasizing that
18 Rengan Rajaratnam was demoted during this period; that these
19 are Raj's trades.

20 Your Honor, we're left, if we have our exhibits which
21 show the overall Galleon portfolio and what happened with
22 Galleon --

23 THE COURT: You want to put a nice, red --

24 MR. JACKSON: Bar over 657?

25 THE COURT: No.

E78GRAJ2

Trial

1 Do you want to put nice in writing "None of the trades
2 on this exhibit are trades by Rengan"?

3 MR. JACKSON: If that's what they want, that's fine,
4 your Honor. We'd be willing to redact the 657, but this is our
5 only --

6 THE COURT: And what about the rest of them?

7 MR. JACKSON: Or we'd be willing to put that on there,
8 but your Honor this is our only proof that shows what Raj was
9 doing in the trades during Clearwire. It's critical proof.
10 It's not excluded by your Honor's ruling, so we should be
11 allowed to put this in.

12 THE COURT: What if, in nice, big letters, there was a
13 note: "This exhibit only reflects trades by Raj Rajaratnam,
14 not Rengan Rajaratnam"?

15 MR. JACKSON: If that's what your Honor thinks is
16 appropriate.

17 THE COURT: If that's your position if you agree that
18 it should not be understood as reflecting trades by Rengan.

19 MR. GITNER: I appreciate that suggestion, Judge, but
20 the problem is still that the 4/21 trade on Exhibit 24 is
21 Rengan.

22 THE COURT: You said you'd take that out.

23 MR. GITNER: Okay. I'm not sure how we'd do that.

24 MR. JACKSON: We have technology that allows us to do
25 that.

E78GRAJ2

Trial

1 THE COURT: Even I might know how to do that.

2 MR. GITNER: Exhibit 25, the realized profit/loss
3 would have to be changed because, as I understand it, that
4 includes the BCR trade on the 21st.

5 MR. JACKSON: That's a negligible trade that would
6 only increase the profitability of this period. If he wants us
7 to redo the calculation and boost this number up from nine --

8 THE COURT: Look, it's the same time period by date.

9 MR. GITNER: I understand. The problem with 25 is it
10 says realized profit and loss from date A, March 24 through
11 date B, April 21. It's completely inaccurate if you include
12 BCR at all because BCR also shorted that day.

13 MR. JACKSON: That's false because it says realized.
14 There was no realized profit or loss from shorts that were
15 enacted on that date. Mr. Callahan was very clear when he
16 testified that he was aware during this time period, shorting
17 activity wasn't reflected because it wasn't realized.

18 THE COURT: Look. I have my markup copy, which has
19 lots of marks on it, and one of them was that the 4/21 leaves
20 out a short of 145,000 shares.

21 MR. GITNER: Right.

22 MR. JACKSON: First of all, correct me if I'm wrong,
23 but the shorting is not on 4/21. The short starts to take
24 place subsequent to that.

25 THE COURT: That's not -- 145,000 on 4/21.

E78GRAJ2

Trial

1 MR. JACKSON: But they're not realized. They're not
2 covered.

3 THE COURT: They're shorts, but the point is that
4 they --

5 MR. GITNER: That's the problem with 24, too. It says
6 it goes through April 21. So, even if you take off the 21st,
7 you have to completely change this and make it go through
8 April 20, I suppose, or April 18. It's just an inaccurate
9 chart. It's completely inaccurate and it concerns trades by
10 Rengan and it shouldn't go in.

11 MR. JACKSON: I would just argue this is an unfair
12 point for the defense to be raising this. We had the witness
13 on the stand. He cross-examined him. We had taken away the
14 charts that were inconsistent with your Honor's ruling, and now
15 he wants to obscure the picture of what Raj was doing during
16 the time period. The jury is entitled to know what Raj was
17 doing during this time period. And if we put the footnote on
18 this chart, Government 24, he should have no objection to these
19 charts going in. He just wants the jury not to be able to see
20 these Clearwire trades that Raj was doing.

21 MR. GITNER: It shouldn't be a footnote. It should be
22 a watermark.

23 THE COURT: It's better and larger than the typing.

24 MR. GITNER: Exactly. What the government did here in
25 their first chart, in their first Exhibit 24, they didn't break

E78GRAJ2

Trial

1 out the way they broke it out here, which was produced on the
2 eve of trial or right in the middle of trial. What these
3 trades are on each day on the 24th and 25th and 26th, they're
4 actually block trades like we discussed at the side bar, all
5 made by Raj and then allocated into different accounts.

6 The reason the government decided to break them out
7 this way is to make them look like they are three separate
8 trades when, in fact, it's one trade at one time and the
9 intranet data proves it. It then gets allocated into the
10 different accounts.

11 So the whole chart is made to look like -- because at
12 the time, the government thought Rengan ran BCR because they
13 hadn't heard Mr. Sito -- to make it look like BCR, Rengan, was
14 making these trades. That was essentially what they opened on
15 and that was their theory. And even though now Mr. Jackson
16 accepts that their theory was wrong, he never got up and said
17 I'm wrong. He is just doing that now when the jury is not
18 here. Again, the jury, just because he's accepting it there
19 could be a juror or two or three that doesn't accept it, that
20 tuned me out, whatever. They put this before the jury and now
21 the jury is allowed to make whatever determination it wants.

22 This is misleading and the government put in evidence
23 to make it look like Rengan did these trades, and now they want
24 to send this chart back, which was devised to look like Rengan
25 did these trades. So even with a big red thing attached to it,

E78GRAJ2

Trial

1 I still think it's misleading.

2 MR. JACKSON: Nothing is devised to make it look like
3 anything. The chart reflects what is in the OMS data. It
4 doesn't make any suggestions beyond that. It doesn't say
5 Rengan Rajaratnam on it. It refers to technology codes. It
6 refers to portfolio manager codes. And Mr. Gitner's made his
7 record about who was responsible for those.

8 Your Honor has excluded trades done by Rengan
9 Rajaratnam and told the jury not to consider those in terms of
10 proof. I would just point out one additional thing: The
11 defense introduced, again, a lot of evidence about what was
12 transpiring on the 21st, the 22nd and the 23rd during the
13 course of their case.

14 They made that stuff relevant to the case regardless
15 of what -- after your Honor's ruling, they made that decision.
16 So the idea that we need to excise that from the government's
17 charts when that was a major portion of the defense, it doesn't
18 even make sense. But more to the point, under the defense
19 theory, these are Raj's charts. These are Raj's trades. They
20 come in.

21 The defense's attempt to obscure the picture of what
22 Raj was doing now, even beyond what Rengan was doing, is
23 unfair. The jury should be able to see Raj made trades in
24 Clearwire during this time period and that he profited from
25 them.

E78GRAJ2

Trial

1 THE COURT: If the 4/21 trade, the sell is out of 24,
2 what is the impact on 25?

3 MR. JACKSON: I would have to do a little calculation
4 just to know exactly what the 657 shares does to the picture,
5 but I can tell you that the sale was 657 shares. We're talking
6 about hundreds of dollars I would believe in terms of the
7 alteration here.

8 MR. GITNER: It would be thousands.

9 MR. JACKSON: No, not in terms of the realized
10 profitability. Maybe it's a couple thousand if that's what
11 they want to argue, but it's certainly not a meaningful change
12 to the number.

13 THE COURT: Wait a minute.

14 MR. GITNER: I don't want to interrupt.

15 THE COURT: I don't care if it's meaningful or not,
16 but it's inconsistent with the ruling to have that trade on the
17 chart and the chart was an advocacy document in the first
18 place. It was never an attempt to be comprehensive.

19 MR. JACKSON: It was an attempt to be comprehensive
20 about what the realized profit and loss was from trading in
21 Clearwire at Galleon during the time period in question. And
22 it accurately reflects what the realized profit and loss was
23 from trading in Clearwire at Galleon associated with these
24 portfolio manager codes was during this time period.

25 The defense wants us to put on here that none of this

E78GRAJ2

Trial

1 stuff was Rengan Rajaratnam's, we'll put that on there. If the
2 defense wants us to basically put that these are Raj's trades,
3 we'll put that on there that these are Raj's trades. If the
4 defense wants an additional note on Government Exhibit 25 that
5 says this does not reflect, note, the \$8,600 loss in Buccaneer,
6 you know, it's actually, you know, there's also a 657 share
7 trade you should disregard, that's fine, but I think that would
8 just be confusing unnecessarily.

9 It doesn't create any meaningful change in the chart
10 and the chart is our only evidence that gives the jury a clear
11 picture of how Raj was able to make money on Clearwire during
12 this period.

13 We don't have the ability after Rule 29, after your
14 Honor has made its decision, to recall our witnesses and redo
15 the charts. This is the portion of the case that your Honor
16 did not exclude, and so we should be able to retain that to the
17 extent that it's not misleading.

18 We're not trying to do anything misleading. It's not
19 dirtying up Rengan. It doesn't say Rengan. It says BCR and it
20 notes the loss in BCR.

21 THE COURT: That argument is a loser.

22 The question is, if we're going to revise this to
23 limit it, limit them both, clearly identified as only being
24 Raj's trades, which we can certainly do by eliminating the 657
25 shares, that line can come out; and we can certainly have in

E78GRAJ2

Trial

1 nice, bold type that this chart only reflects trades by Raj and
2 does not reflect any trades by Rengan.

3 I can deal with that.

4 MR. GITNER: You also have to change the date at the
5 top, but that's easy.

6 THE COURT: Right. Yes. We'll make it through 4/18.
7 That we can do, but how do we deal with --

8 MR. JACKSON: We don't have to change the date if
9 we're putting the note that says it only reflects Raj's trades
10 because it reflects all of Raj's trades during that time
11 period. It's just taking away --

12 MR. GITNER: It says Galleon portfolio manager codes.

13 MR. JACKSON: But the note is going to say that this
14 chart is only reflecting Raj's trades, so if we redact the last
15 one, if we redact the last trades, it reflects Raj's trades.

16 MR. GITNER: Why would you not agree?

17 MR. JACKSON: Judge, I'm just trying to not have this
18 chart -- once we start making a million changes, we have more
19 confusion.

20 THE COURT: Who is being confused? If there's no
21 trade for 4/21, why would a juror be concerned about the
22 heading at the top?

23 MR. JACKSON: Because we have our price chart reflects
24 the time period, the subsequent chart Government Exhibit 25
25 reflects the time period.

E78GRAJ2

Trial

1 THE COURT: But it wouldn't then, right, because the
2 only trade on 4/21 is -- well, I don't know what it would do.
3 I see what you mean, that if there would still be Buccaneer
4 trades on 25 and if that -- well, I guess the question is what
5 date does that go through? I don't know why it would go
6 through 4/21, but the point is, how can the Buccaneer
7 profit/loss number be adjusted properly?

8 MR. GITNER: It's actually exceedingly difficult to
9 adjust because we have to determine we're going to have a FIFO
10 determination, a LIFO determination. It's not necessarily so
11 simple.

12 THE COURT: This is all short trading. This is no
13 long gains.

14 MR. JACKSON: It's a short trade. You can look at the
15 elements. Can we pull up the elements that are in now.

16 MR. GITNER: It's actually quite complicated from an
17 accounting point of view about what exactly the profit or loss
18 would be. It's not like these codes are -- you're buying at
19 one time and you're selling at another time. They're buying
20 and selling over time, and so when you sell on April 21, you
21 don't necessarily know your profit. It's going to be like a
22 weighted average. It's a very complicated formula to determine
23 what the numbers were.

24 I could have crossed Mr. Callahan for quite some time,
25 frankly, over his determination of these numbers. I chose not

E78GRAJ2

Trial

1 to because I thought it was not necessarily the most relevant
2 point in this case, but it is relevant to making the numbers
3 accurate and it's not simple at all.

4 MR. JACKSON: Judge, we're talking about --

5 MR. GITNER: In fact, I made a motion on this, I don't
6 know if your Honor recalls, about keeping profit numbers out
7 because it was subject to opinions essentially about what the
8 profit or loss could be based on very complicated transaction
9 calculations.

10 MR. JACKSON: It's not that complicated. And your
11 Honor, if now we're talking about the accuracy --

12 THE COURT: The issue he's raising is how do you match
13 a trade on a certain day, the sell with the buy. Which buy are
14 you allowed to match it against?

15 MR. JACKSON: Typically, we're talking about first,
16 you know, we're talking about the last trade and the last sell,
17 right?

18 Your Honor, let me just say this. Very respectfully,
19 defense counsel is basically creating an issue out of an issue.
20 Your Honor's determination right now that we should put on 24
21 something indicating this is all Raj's trading clears
22 completely the ambiguity that they are concerned with. Now
23 they're talking about or are concerned about the accuracy of
24 the chart that's in 25 when 25 is already accurate. It
25 reflects all of the realized profit and loss.

E78GRAJ2

Trial

1 There's an artificial issue being created when they
2 now say oh, but we need to take the 657 out because this is
3 inaccurate. All that would happen if we take the 657 out is
4 that this number goes up. It just goes up by either a couple
5 of hundred or a couple thousand dollars. But it doesn't in any
6 way -- if we're talking about what realistically could be
7 perceived by the jury, it doesn't in any way affect the jury's
8 determination as to anything with regard to Rengan Rajaratnam.
9 We don't need to change this to the extent that it's
10 already -- it is accurate; it reflects all of the realized
11 profit and loss.

12 When we put on the previous exhibit the notation that
13 your Honor instructed where it says "this is Raj's trading,"
14 that should cure their concern about ambiguity. The concern
15 about the accuracy or the method utilized to calculate by Agent
16 Callahan, that's far afield of what we should be addressing
17 just when we're putting the exhibits into the jury room.

18 I'd also like to ask whether the defense has finished
19 burning his disk.

20 MR. GITNER: It's on its way.

21 MR. JACKSON: I would request permission to send the
22 government's disk back because --

23 MR. GITNER: No. We're having one disk. It's one
24 disk with all of the calls. That was the agreement with
25 Mr. Frey: One disk with all of the calls. That's what's

E78GRAJ2

Trial

1 taking so long. It can't be two disks.

2 MR. JACKSON: It can be two disks. The agreement with
3 Mr. Frey was contingent upon our expectation that they would
4 have the appropriate stuff done.

5 MR. GITNER: No, no, no. This is not fair. We just
6 happen to be the people doing it. It's not that we didn't have
7 the appropriate stuff done.

8 THE COURT: Apparently, the government failed to
9 redact some things that should have come off, so it has to be
10 done again.

11 MR. JACKSON: No. The defense failed to redact. The
12 defense failed to redact things that should have come off. Our
13 disk with regard to our exhibits, everything is accurate. It's
14 prepared.

15 MR. GITNER: The reason why we're having a delay now
16 is because we had an understanding that it would be one disk.
17 And then the government -- I don't want to push blame on
18 anybody, my team was under the impression from the government
19 without going through me there should be two disks. Now we're
20 just making one disk. It's happening right now. It should be
21 ready at any moment.

22 THE COURT: Would you object if Mr. Gardner tried to
23 help the jury start the computer.

24 MR. JACKSON: No objection?

25 MR. GITNER: No objection.

E78GRAJ2

Trial

1 MR. JACKSON: I'll note for Mr. Gardner, the password
2 is taped on to the computer. It's actually physically on the
3 computer.

4 THE LAW CLERK: Okay.

5 MR. GITNER: We're literally putting the label on the
6 disk right now.

7 THE COURT: And if the 657 shares sold at a profit,
8 sold at loss? Forget the details.

9 MR. GITNER: You're asking a question, was it profit
10 or loss?

11 THE COURT: Yes.

12 MR. JACKSON: Your Honor, I think we can clarify this.
13 The last purchase of BCR in Clearwire occurs on 3/28 of 25,000
14 shares. Those are purchased at \$14.59.

15 The sale then, the 657 sale, to the extent that it
16 comes out of that is at 13.39, about 1.20 difference on those
17 600 shares. And you can theorize that would be an additional
18 loss of 657 times a dollar 20, which amounts to \$788. So, it's
19 an additional loss if you include -- it's part of the loss
20 calculation is \$788.

21 So to make this accurate, if we took that off of
22 there, we would increase the number from 969 -- not accurate, I
23 want to be clear, it's already accurate -- but if we were to
24 change this to reflect what Mr. Gitner is asking for to take
25 away this, it would change it from 969,114 to 969,902. The

E78GRAJ2

Trial

1 number goes up to 969,902, which we're perfectly happy to do.

2 THE COURT: Could someone clue me in as to what is
3 going on about this disk?

4 MR. GITNER: I'm not sure, Judge.

5 MR. FREY: We had prepared a disk of government
6 admitted audio files that we understand that defense counsel
7 was going to be preparing a defense version, a separate disk.
8 We understand from speaking with counsel this morning that they
9 would like to combine all of that onto one disk.

10 The problem is that there were a few calls where your
11 Honor either had ruled portions come out for various reasons or
12 defense counsel submitted portions and not the full version.
13 And my understanding is hat that wasn't done prior to this
14 morning; the government's were, but not the defense side. So
15 we're just working through the combining and the splicing
16 issues.

17 MR. JACKSON: Judge, since the jury is clearly engaged
18 in their deliberations and they requested it, there's no reason
19 this all has to be on one disk. They can send in the defense
20 disk when they finish with it and we can send in the government
21 exhibit disk now which the jury has requested so the jury is
22 not delayed at this point.

23 THE COURT: Is there any reason that we could not send
24 the government's disk in now. When you get the combined, we'll
25 trade out the disks?

E78GRAJ2

Trial

1 MR. GITNER: I suppose we can do that. I think it's
2 going to be ready I'm told in a few moments. It was ready but
3 apparently they tried to write something over. One file didn't
4 get written over, so it still existed.

5 MR. JACKSON: We've been waiting for more than a few
6 moments. So we ask to send this stuff in and when they get
7 their --

8 MR. GITNER: I understand the technical difficulties.
9 I apologize. I think it's exceedingly unfair in this case to
10 only send in the government's tapes even if just for a few
11 minutes, and I understand there's been a note, but given the
12 fact that what I have been told, it should be less than three
13 minutes, we'll have the whole thing. It just seems exceedingly
14 unfair to send in the government exhibits because Mr. Jackson
15 is pushing, pushing, pushing as he's good at doing. We can
16 just wait three minutes and the government will have it.

17 MR. JACKSON: I'm not pushing, okay. The jury has
18 requested these exhibits. It's not exceedingly unfair. Being
19 in courtrooms, we only send in what the jury has requested.
20 And they're going to get the defense exhibits as soon as the
21 defense pulls its tech together. So, we should send in what we
22 have and allow the jury not to be impeded in their
23 deliberations.

24 MR. GITNER: I'm told less than two minutes according
25 to the clock on the computer.

E78GRAJ2

Trial

1 THE COURT: Are we going to get to the government has
2 to check whether it's accurate or not?

3 MR. FREY: Yes, we would want to check it.

4 THE COURT: Okay. The government will act
5 extraordinarily quickly to confirm, no delays. I'm going to
6 stay here and I'm going to watch you, but I think that we have
7 to respect the jury and the government disk can go in and it's
8 going to be taken right out as soon as the single disk is
9 created.

10 MR. JACKSON: Thank you, Judge.

11 THE COURT: Can we go back to Exhibit 24, put a nice
12 huge header on it to clarify what it is and take out the 4/21
13 trade and the question is whether they -- if we also put on
14 Exhibit 25 --

15 MR. JACKSON: Can we have one person from defense team
16 on this issue really quickly, government Exhibit 25, your
17 Honor.

18 THE COURT: Can we put a header on it. Instead of
19 bothering to adjust the numbers, which might be more accurate,
20 but is also immaterial by any definition of materiality, that
21 to say that these reflect the realized profits and loss from
22 trading by Raj.

23 MR. GITNER: I understand the materiality issue,
24 Judge, I fully appreciate it. My issue is that I do not want
25 in any way to suggest that anything that happened on April 21

E78GRAJ2

Trial

1 is Raj. It's not. That's the problem.

2 April 21 is when the shorts occur, and your Honor will
3 remember in argument in letters to your Honor, the government
4 was arguing that there was no proof that Rengan directed those
5 shorts. They have taken the position before this Court that
6 that's not Rengan's shorts, and it wasn't until I had to point
7 them to a few instant messages that they have sort of backed
8 off. They have taken that position. It's not fair to suggest
9 that what happened on the 21st is not Rengan.

10 THE COURT: Then can we agree that instead of the
11 calculation being in accordance with GAAP or whatever other
12 standard is utilized, that we do what is referred to as a
13 back-of-the-envelope calculation like Mr. Jackson just did and
14 adjust the numbers.

15 MR. GITNER: And move the date.

16 THE COURT: Move the date, adjust the number.

17 MR. JACKSON: If we move the date, how are we
18 adjusting the number, your Honor?

19 THE COURT: Because when you take out the 4/21 trade,
20 which is at a loss of a-dollar-something or other a share, it
21 obviously comes out of both the Buccaneer number and the total.

22 MR. JACKSON: Okay.

23 THE COURT: That's how you do it. It's not that hard.

24 MR. JACKSON: So we'll just agree pursuant to
25 stipulation of the parties that we're going to change

E78GRAJ2

Trial

1 Government Exhibit 25 to reflect -- we'll change the Buccaneer
2 number by the \$788 and we'll change the date to April 18.

3 THE COURT: Right.

4 MR. GITNER: Right.

5 MR. JACKSON: Then we'll have the total number be
6 \$969,902.

7 THE COURT: Since it's in the Buccaneer fund, you make
8 the adjustment.

9 MR. JACKSON: In the Buccaneer fund.

10 THE COURT: In the Buccaneer fund, and in the total.

11 MR. JACKSON: Great. I'm going to go make those
12 changes right now.

13 THE COURT: Show it to Mr. Gitner. I'll be upstairs
14 in case you need me.

15 MR. GITNER: They're doing the final check on the
16 disk.

17 THE COURT: Right.

18 MR. GITNER: Everything seems fine. We have a thumbs
19 up. We need to look at it for two seconds.

20 THE COURT: So we're going to trade out the disk right
21 now.

22 MR. GITNER: Just so your Honor knows, what we propose
23 to do, I think the government is fine with this. We each
24 basically have an index, defense exhibits, their government
25 exhibits, because the file name just says 510. The index says

E78GRAJ2

Trial

1 the date and the participants. So we'll send in our respective
2 indices as well with this disk if your Honor is okay with that.

3 THE COURT: Fine.

4 THE LAW CLERK: They need an extension chord.

5 MR. GITNER: That I don't have.

6 THE COURT: The Court has one.

7 MR. JACKSON: I'll also take a look and see if we have
8 one.

9 THE COURT: Switch out the disk.

10 MR. GITNER: Should one of your clerks bring it in to
11 swap it out?

12 THE COURT: Yes.

13 (Recess pending verdict)

14 (In open court; jury not present)

15 MR. JACKSON: Actually, I placed a copy on the judge's
16 bench, as well as yours.

17 After conferring, the parties agree that we revert
18 back to the original exhibits, but we would place this
19 coversheet on Government Exhibit 24 that is in front of your
20 Honor.

21 Just for the record, the coversheet says "The parties
22 agree that the trading reflected in Government Exhibit 24 from
23 March 24, 2008 through April 18, 2008 was caused by Raj
24 Rajaratnam." So that's actually stapled now on the original
25 Government Exhibit 24 and we're reverting back to the original

E78GRAJ2

Trial

1 Government Exhibit 25.

2 Just to be clear, that's the Government Exhibit 24
3 that includes the April 21 BCR trade and the Government Exhibit
4 25 that comes to a total calculation of \$969,114.

5 MR. GITNER: So rather than have the header on the
6 exhibit, the header is essentially on a coversheet essentially.
7 The exhibit remains the same rather than altering the exhibit.

8 THE COURT: If it's agreeable to you, I don't have any
9 objections.

10 MR. JACKSON: Thank you very much, Judge.

11 THE COURT: The only one that has to be swapped out is
12 24?

13 MR. JACKSON: I don't think we actually sent back 24
14 and 25.

15 MR. GITNER: That was my understanding. The folders
16 were actually pulled.

17 THE COURT: I'm sorry. I thought I got some word from
18 my law clerk that there was a swapping issue.

19 MR. GITNER: I think the swapping was amongst me and
20 the government.

21 MR. JACKSON: It was between ourselves.

22 THE COURT: So all that has to happen now is that 24
23 and 25 need to be given to the jury, and I assume your exhibits
24 were in a card or box.

25 MR. JACKSON: Yes, we have them in the same format

E78GRAJ2

Trial

1 that the rest of the exhibits are. They're here in original
2 folders.

3 THE COURT: So we can just ask the court officer to
4 add them. They're in a box, right?

5 MR. JACKSON: Yes. They're in a container of some
6 kind. It may be a red well or a box, but this can be placed
7 into it.

8 MR. GITNER: If the court officer can go and place it
9 in obvious order.

10 THE COURT: Explain to the court officer what he
11 should do.

12 MR. GITNER: My concern would be the court officer
13 throws it on the table.

14 THE COURT: And highlights it.

15 MR. GITNER: Exactly. It should just be placed.

16 THE COURT: The collection was missing something.

17 MR. GITNER: Exactly.

18 MR. JACKSON: Judge, two housekeeping questions before
19 we let the Court have its lunch.

20 THE COURT: It's much too early for my lunch.

21 MR. JACKSON: I know that sometimes judges instruct
22 the parties that they can be away from the courthouse during
23 the lunch hour. Is that your Honor's expectation?

24 THE COURT: No. I don't want you to starve, but we
25 haven't even inquired of the jury as to whether they want

E78GRAJ2

Trial

1 lunch.

2 MR. JACKSON: Absolutely.

3 THE COURT: We'll probably not ask that question for
4 about another 25 minutes, unless they contact us first. If
5 they're eating lunch, it would probably be about 2:00. I don't
6 have any reason to believe that they will necessarily stop
7 talking just because they're eating, even if it's rude to talk
8 with food in your mouth.

9 MR. JACKSON: We'll stay within the current range of
10 the courthouse.

11 THE COURT: We have your cell. If you're in the
12 cafeteria or something, we'll have no problem getting ahold of
13 you.

14 MR. JACKSON: Great. That was the other thing I was
15 going to pass up to your law clerk if it's permissible because
16 I actually don't know if you have our cell numbers.

17 MR. GITNER: Chris gave it. Chris' handwriting is
18 actually better than the typed version.

19 THE COURT: Just to let you know, we really won't be
20 sitting past 4:30, 4:40 today, assuming all that time is used
21 up.

22 MR. JACKSON: Absolutely. Thank you very much.

23 (Recess pending verdict)

24
25 (In open court; jury not present)

E78GRAJ2

Verdict

1 THE COURT: As we have been informed, we understand
2 the jury has reached a verdict. I guess you'll stand for them.

3 (At 2:34 p.m., jury present)

4 THE COURT: Everyone may be seated.

5 THE LAW CLERK: Will the jurors please answer present
6 when your name is called.

7 (Jury roll called; all present)

8 THE LAW CLERK: Will the foreperson please rise. Has
9 the jury agreed upon a verdict?

10 THE FOREPERSON: Yes, we have.

11 THE LAW CLERK: The question on the verdict form
12 reads: Do you find that the government has proven beyond a
13 reasonable doubt that the defendant, Rajarengan Rajaratnam,
14 also known as Rengan Rajaratnam, is guilty of conspiracy to
15 commit insider trading?

16 How do you find, guilty or not guilty?

17 THE FOREPERSON: Not guilty.

18 THE LAW CLERK: Ladies and gentlemen of the jury,
19 listen to your verdict as it stands recorded.

20 On the question of whether the jury finds that the
21 government has proven beyond a reasonable doubt that the
22 defendant, Rajarengan Rajaratnam, also known as Rengan
23 Rajaratnam, is guilty of conspiracy to commit insider trading,
24 the jury finds the defendant not guilty.

25 Madam foreperson, is that the jury's verdict?

E78GRAJ2

Verdict

1 THE FOREPERSON: Yes, it is.

2 THE COURT: Is there a request to poll the jury?

3 MR. FREY: No, your Honor.

4 THE COURT: Are we thanking the jury again for their
5 service or do we need to keep them any further?

6 MR. FREY: No, your Honor.

7 THE COURT: I understand that there's a request that I
8 speak with you.

9 THE FOREPERSON: Yes.

10 THE COURT: Could you just wait for me in the jury
11 room.

12 THE FOREPERSON: Should we all leave?

13 THE COURT: Yes. Just go and wait for me.

14 (Jury excused)

15 THE COURT: Is there anything else we need to cover?

16 MR. GITNER: I just ask that bail be extinguished.

17 THE COURT: Absolutely.

18 MR. GITNER: Thank you, your Honor.

19 THE COURT: You can still get back to Brazil for the
20 finals.

21 THE DEFENDANT: Absolutely.

22 MR. JACKSON: Thank you, your Honor.

23 MR. GITNER: Thank you, Judge.

24 (Adjourned)

25